parative study. The *animus possidendi,* so necessary to the Roman conception, was absent from the Germanic law; so, the means of protecting possession, so highly developed both in France and England, and at least well known to the Roman law in the interdicts *uti possidetis* and *unde vi* were practically unknown to the Germanic law. Perhaps this was because possession created a presumption of title, and the trial of possession became submerged in a trial of title. The disseisor had to show his title. The differences between the Roman and Germanic systems naturally gave rise to a voluminous literature on the theories of possession. In contrast with the single noteworthy common-law production of Pollock and Wright, it is conservative to say that twenty to thirty important monographs on possession may be noted in continental legal literature. Many eminent jurists have considered it incumbent upon them to present at length their views on possession.

With the vast theoretical and historical background of the continental jurist, it is surprising to observe his aversion for analytical jurisprudence. Even Jhering scorns it; and Bierling and Binding have found few adherents in defending it. Yet, when it is observed that the word *Rechte* (rights) is used in several different senses, that "power" is confused with "capacity", and that *Schuld* (duty) is distinguished from *Haftung* (liability) by the fact that the former concept is free from the element of compulsion or "must" (involving merely *sollen,* "ought" or "shall"), whereas the latter, liability, does include compulsion or "must", distinctions which lie at the foundation of the Germanic law of obligations, we may be pardoned for finding a certain confusion in some aspects of German legal thought. Nor is it remarkable that these uncertain concepts were overpowered in the civil code by the Roman *obligatio* which comprised the element of duty to perform, and that legal enforceability is now made the test of "duty". Possibly the distinction between a moral and a legal duty might explain the modern survivals of *Schuld* and *Haftung.* Tort liability is in all continental countries less technically developed than in the common law.

To the continental student a legal doctrine presents a vista of historical data and theoretical hypotheses and opinions rather than a digest of recent cases. It is, thereferoe, inevitable that the continental lawyer and law writer must be a scholar. Whether the civil law more efficiently serves those who live under it than does the common law, the test for utilitarian comparison, is a matter still among the unexplored fields of legal research. At all events, lawyers of the common law cannot but profit by having uncovered for their information the sources and history of legal institutions in the lands whence their forbears emigrated or in which a contemporary civilization worked out its social institutions. That is the significance of the Continental Legal History Series.

The work under review cannot be left without tribute to the excellent introduction of Professor Vinogradoff or without adequate expression of appreciation of the scholarly performance of a most difficult task by the translator, Professor Philbrick.

Edwin M. Borchard.

FORMATIVE INFLUENCES OF LEGAL DEVELOPMENT. Evolution of Law: Select Readings on the Origin and Development of Legal Institutions, Vol. III. Compiled by ALBERT KOCOUREK and JOHN H. WIGMORE. Boston: LITTLE, BROWN AND COMPANY. 1918. pp. 705.

"Formative Influences of Legal Development" is the third volume in a series on the evolution of law, compiled by Professor Kocourek and Dean Wigmore of Northwestern University. As are the preceding

volumes in the series, it is a symposium, selected from the writings of American and foreign authors, legal and sociological, and like all symposia, it sets before the students a number of opinions frequently more or less conflicting, as influenced by the particular field of learning or point of view of the writer. [For instance, Professor Petrucci of Madrid, finds the origin of property rights in the instincts of plants and animals, p. 288, ss, while Mr. Edward D. Page thinks that primitive fore-runners of property rights (among birds and animals) are hardly more than an assertion of the right to defend (food), "for there is no corresponding duty to respect the rights of a hoarder or builder and therefore no complete obligation", p. 396.] The treatment of the subject is very wide. It deals with the geophysic, economic, biologic, racial, religious, psychologic, political and social factors of legal evolution and gives a wide selection of theories as to its process from the twenty-eight methods of evolution laid down by M. de la Grasserie to Professor Wigmore's theory of planetary evolution, which takes into account the complicated forces turning the wheel of human fate now one way, now another. It is perhaps natural in a book devoted to legal development that the dynamic rather than the static influences on changes in the law should be stressed, but the reader should not lose sight of the importance of the need for security as opposed to the need for development in shaping the progress of the law.

The evolution of the law is proceeding with rapidity at the present time. Bentham, perhaps one of the most liberal English writers, at the end of the eighteenth century, in his *Principles of Legislation,* dismissed the subject of master and servant in a paragraph as a subject of free contract, not of legislation, and the draftsmen of the French Civil Code devoted but one short section to the subject. This simple view of the law of master and servant has been transformed since the middle of the nineteenth century into the complicated labor law of today. It is only necessary to note the great change in the law of domestic relations, particularly the position of the wife, to call to mind another series of revolutionary statutes and decisions, which perhaps, with the acquisition of the vote by women, will be decidedly speeded up. An indication of what may come about is the change in the woman's share of community property in California from the third, which, before she got the vote, she received only as a right of inheritance if she survived her husband, to the half, which she not only will get as her own on his death, but can leave by will if she dies before him, provided the people approve the act passed by the legislature.

If a fourth volume of this series is to appear, it might well be made up of selections from books like *"Law and Opinion in England"* by Professor Dicey; *Principles of American Legislation"* by Professor Freund, and *"History of Labor Legislation"* by Commons and Andrews, showing the too little understood process of the evolution of the law going on under our own eyes, and the factors which are influencing its course. Evolution of the law since the Industrial Revolution, especially since the right to vote was given to working people, and more recently to women, so that for the first time in the world's history a government "of the people" exists, would form a fitting complement to the three volumes of this series which have already appeared. Such a book would, perhaps, develop an interest in the subject in many readers which would lead them back to the ancient sources which are of such great interest and importance to those who wish to understand both sociological and legal developments of today.

J. P. Chamberlain.